

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

PATRICK J. O'MALLEY,)	
)	
Petitioner,)	Civil No. 06-1538-HO
)	
v.)	ORDER
)	
CHARLES DANIELS,)	
)	
Respondent.)	
_____)	

HOGAN, District Judge.

Plaintiff filed a petition under 28 U.S.C. § 2241 alleging that the BOP is improperly applying sentencing enhancements to deny him eligibility for early release in violation of applicable program statements and petitioner's constitutional rights.

Plaintiff now moves for a preliminary injunction

enjoining respondent from applying the "inaccurate and unconstitutional findings of sentencing factors." Motion to the Court (#6) p. 3.

The general rules for granting preliminary relief are familiar and need not be discussed in detail. "The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held," and it is generally inappropriate for a federal court at the preliminary injunction stage to give a final judgment on the merits. University of Texas v. Camenisch, 451 U.S. 391, 395 (1981); Tanner Motor Livery, Ltd. V. Avis, Inc, 316 F.2d 804, 808 (9th Cir. 1983). See also, Regents of University of California v. ABC, Inc., 747 F.2d 511, 514 (9th Cir. 1984) ("* * * the function of a preliminary injunction is to preserve the *status quo ad litem*.") Wright and Miller, Federal Practice and Procedure § 2947 (1973) ("* * * the most compelling reason in favor of entering a Rule 65(a) order is the need to prevent the judicial process from being rendered futile by defendant's actions or refusal to act").

In this case, the preliminary equitable relief that plaintiff seeks would in essence constitute a judgment on the merits of plaintiff's underlying claim and is therefor

inappropriate.

Based on the foregoing, plaintiff's Motion to the Court for Preliminary Injunction (#6) is **DENIED**.

IT IS SO ORDERED.

DATED this 28th day of February, 2007.

s/ Michael R. Hogan
Michael R. Hogan
United States District Judge